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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/780,600

02/19/2004

Philip M. Waldorf

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12/22/2004

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EXAMINER

NGUYEN, CHAU N

ART UNIT

PAPER NUMBER

2831

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,600

Applicant(s)

WALDORF ET AL.

Examiner

Chau N Nguyen

Art Unit

2831

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☒ Claim(s) 20-25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 22 is objected to because of the following informalities: in claim 22, line 2, "a plurality of electrical conductors" is unclear to how these conductors relate to the conductor already recited in claim 1; in claim 22, lines 4-5, "said flat mounting surface" lacks antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burdick (5,850,808) in view of Altermatt et al. (4,861,947).

Burdick discloses an anti-roosting device (Figs 1 and 2) comprising an elongate track, an electrical conductor (14, 16, 18) at least partially embedded within the track, and an electrical source operatively coupled to the electrical conductor. Burdick does not disclose the electrical conductor including a plurality

of wires around a rope. Altermatt et al. discloses an electrical conductor comprising a plurality of wires around a rope (Figure 1). It would have been obvious to one skilled in the art to use the electrical conductor as taught by Altermatt et al. for the conductor of Burdick since the conductor taught by Altermatt et al. provides both electrical properties and strength.

The modified device of Burdick also discloses the conductor including 5 or 9 wires around the rope (re claims 2-4), the rope comprising a substantially nonconductive material (re claim 5), the conductor being generally circular in cross-section and having a diameter of approximately 0.125 to approximately 0.175 inches (see Burdick, col. 2, line 65) (re claim 6), the track including a channel (20) sized to substantially embed the conductor while leaving a portion thereof exposed (re claim 7), the channel sized to leave from about 10% to about 20% (Figure 2b) of the conductor exposed (re claims 8 and 9), the track including a second channel for a second conductor (re claim 10), the channels being substantially parallel to a longitudinal axis of the track (re claim 11), the track including a flat side opposite the exposed conductor (re claim 13), the second conductor including wires around a rope (re claim 14), the electrical source being designed to provide low amperage at high voltage to the conductor (re claim 15), the source providing about 3 to 6 amps at about 4000 to 8000 volts to the

conductors (col. 4, lines 39-40) (re claim 16), the source being a direct current source or an alternate current source (re claims 17 and 18), the track including a substantially flat mounting surface extending substantially along the width of the track (re claim 19). Re claim 12, it would have been obvious to one skilled in the art to provide a plurality of holes (at the bottom 48, between channels 20 and 24) in the track of Burdick for facilitating attachment of the track to an object (50) since providing holes in a track for facilitating attachment of the track to an object is known in the art.

Allowable Subject Matter

3. Claims 20-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not teach or suggest an anti-roosting device comprising all the features as recited in the claims and in combination with the track including an arcuate surface opposite the mounting surface in which electrical conductor is embedded within the arcuate surface (re claim 20), with the track including a flat mounting surface which is opposite the upper surface and

extends underneath the conductors (re claim 22), and with the track containing a mounting surface that is designed to eliminate air gaps between the track and a surface upon which the device is mounted (re claim 24).

Response to Arguments

5. Applicant's arguments filed Oct. 28th 2004 have been fully considered but they are not persuasive. Applicant primarily argues that the combination of Burdick and Altermatt would teach against the stated purpose of the Burdick device to have a tight fit between the support and the conductors. This argument is not found persuasive. In contrast to applicant's argument, Burdick does recognize that condensation and other forms of moisture may come to be present between the support and the conductors (col. 3, lines 9-13). Therefore, Burdick provides small apertures in the support to enable drainage of such moisture. Moreover, although the stranded conductor taught by Altermatt is formed of a plurality of strands, it has a round cross-section. Therefore, it can be tightly fitted into the support.

Summary

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chau N Nguyen whose telephone number is 571-272-1980. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on 571-272-2800 ext 31. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Chau N Nguyen
Primary Examiner
Art Unit 2831